

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

Kevin Turner and Shawn Wooden, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

National Football League and NFL Properties, LLC,
successor-in-interest to NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:

Pope McGlamry P.C. v. Fernando Smith
Attorney Lien Dispute
(Doc. No. 7971)

AND

Lieff Cabraser Heimann & Bernstein, LLP v.
Fernando Smith
Attorney Lien Dispute
(Doc. No. 10460)

REPORT AND RECOMMENDATION

DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

May 17, 2019

Before the Court for Report and Recommendation are two Notices of Attorney's Lien ("Lien") seeking attorney's fees and costs from any Monetary Claim to be paid to Settlement Class Member Fernando Smith, which were filed on July 13, 2017 by Pope McGlamry P.C. ("Pope") (Doc. No. 7971) and February 26, 2019 by Lieff Cabraser Heimann & Bernstein, LLP ("Lieff") (Doc. No. 10460), two of his former counsel. The Claims Administrator issued a Notice of Lien on September 11, 2018 to Mr. Smith's current counsel, Law Offices of Caroline V. Davis, P.C.

(“Davis”) concerning the Pope lien, and on March 6, 2019 it issued a similar Notice to Davis concerning the Lieff lien. In the midst of these lien filings, a favorable Post-Appeal Notice of Monetary Award Claim Determination was issued to Mr. Smith on December 20, 2018.

The District Court referred all Petitions for individual attorney’s liens to this Magistrate Judge. (Doc. No. 7746). Rules Governing Attorneys’ Liens (“Rules”) were adopted on March 6, 2018 and amended on October 3, 2018. (Doc. Nos. 9760 and 10283). As set out in these rules, the Claims Administrator has referred these Lien Disputes to me for Report and Recommendation.

The parties submitted form Withdrawals of Attorney’s Lien Dispute (the “Withdrawals”) pursuant to Rule 24 on April 9, 2019 (Pope) and on April 10, 2019 (Lieff and Davis). The signed agreements clearly indicate the percentage of the Award that each of these three law firms will receive and sets forth their agreement as to how to disburse any portion of the 5% holdback that may be released in the future. Upon review of the Withdrawals and the contingency fee agreements, and in consideration of the Presumptive Fee Cap (Doc. No. 9863), we conclude that the fee to be paid to each firm is reasonable, does not exceed the percentage for which the parties contracted, and that the collective fees are within the percentage allowed under the 22% Presumptive Fee Cap. Accordingly, we conclude that the Withdrawal should be granted and that the Claims Administrator should be ordered to distribute the attorneys’ fees to Pope and to Davis as set forth in the Withdrawal.¹

We also have reviewed the lists of itemized costs submitted by Lieff and Davis and the

¹ Pursuant to the Court’s Order Regarding Withholdings for Common Benefit Fund (Doc. No. 10104), 5% of the Award is currently being held in the Attorney’s Fees Qualified Settlement Fund, where it must remain until further order of the Court. The Claims Administrator will ensure that if any portion of those funds are later released they will be paid pursuant to the agreed terms in the Withdrawal.


provisions of their fee agreements that provide for reimbursement of costs. We conclude that Lieff and Davis are entitled to the costs asserted.

RECOMMENDATION

AND NOW, this 17th day of May, 2019, it is respectfully **RECOMMENDED** that the withdrawal of lien dispute be **GRANTED** and the Claims Administrator be ordered to distribute the attorneys' fees and costs as is set forth in the Withdrawal submitted by the Parties.

The Parties may file objections to this Report and Recommendation. *See* Rule 25(d).

BY THE COURT:


DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE